

Securities and Exchange Commission

§ 240.11a2-2(T)

§ 240.11a1-6 Transactions for certain accounts of OTC derivatives dealers.

A transaction effected by a member of a national securities exchange for the account of an OTC derivatives dealer that is an associated person of that member shall be deemed to be of a kind that is consistent with the purposes of section 11(a)(1) of the Act (15 U.S.C. 78k(a)(1)), the protection of investors, and the maintenance of fair and orderly markets if, assuming such transaction were for the account of a member, the member would have been permitted, under section 11(a) of the Act and the other rules thereunder (with the exception of §240.11a1-2), to effect the transaction.

[63 FR 59396, Nov. 3, 1998]

§ 240.11a2-2(T) Transactions effected by exchange members through other members.

(a) A member of a national securities exchange (the "initiating member") may not effect a transaction on that exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless:

(1) The transaction is of a kind described in paragraphs A through H of section 11(a)(1) of the Act and is effected in accordance with applicable rules and regulations thereunder; or

(2) The transaction is effected in compliance with each of the following conditions:

(i) The transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the "executing member") which is not an associated person of the initiating member;

(ii) The order for the transaction is transmitted from off the exchange floor;

(iii) Neither the initiating member nor an associated person of the initiating member participates in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) In the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises in-

vestment discretion, neither the initiating member nor any associated person thereof retains any compensation in connection with effecting the transaction: *Provided, however,* That this condition shall not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to section 11(a) of the Act and this section executed on or after March 15, 1978, by each of them and by such exchange member or associated person exercising investment discretion.

(b) For purposes of this section, a member "effects" a securities transaction when it performs any function in connection with the processing of that transaction, including, but not limited to, (1) transmission of an order for execution, (2) execution of the order, (3) clearance and settlement of the transaction, and (4) arranging for the performance of any such function.

(c) For purposes of this section, the term "compensation in connection with effecting the transaction" refers to compensation directly or indirectly received or calculated on a transaction-related basis for the performance of any function involved in effecting a securities transaction.

(d) A member, or an associated person of a member, authorized by written contract to retain compensation in connection with effecting transactions pursuant to paragraph (a)(2)(iv) of this section shall furnish at least annually to the person or persons authorized to transact business for the account a statement setting forth the total amount of all compensation retained by the member or any associated person thereof in connection with effecting transactions for that account during the period covered by the statement, which amount shall be exclusive of all amounts paid to others during that period for services rendered in effecting such transactions.

(e) A transaction effected in compliance with the requirements of this section shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.